

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

William Brown,

Case No. 21-CV-1807 (JRT/KMM)

Petitioner,

v.

**REPORT AND
RECOMMENDATION**

B. Birkholz, Warden of Federal Prison Camp Duluth; and Michael Carvajal, Director of the Federal Bureau of Prisons, in their official capacities,

Respondents.

Upon commencing this habeas corpus action, petitioner William Brown did not pay the required \$5.00 filing fee or apply for *in forma pauperis* (“IFP”) status. The Clerk of Court notified Mr. Brown on August 6, 2021, that he would be required to submit the filing fee or an IFP application, failing which this matter could be summarily dismissed without prejudice. *See* ECF No. 3.

More than three weeks have passed since Mr. Brown commenced this action, and yet Petitioner has not yet submitted the filing fee or applied for IFP status. In fact, Mr. Brown has not communicated with the Court about this case at all since commencing this action. Accordingly, this Court now recommends that this action be dismissed without prejudice under Rule 41(b) for failure to prosecute. *See Henderson v. Renaissance Grand Hotel*, 267 Fed. App’x 496, 497 (8th Cir. 2008) (per curiam) (“A

district court has discretion to dismiss an action under Rule 41(b) for a plaintiff's failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.”). Should Petitioner submit the filing fee or an IFP application during the period for objecting to this Recommendation, this Court will vacate the recommendation of dismissal and review the habeas petition as required by Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. *See* Rule 1(b), Rules Governing Section 2254 Cases (“The district court may apply any or all of these rules to a habeas corpus petition not [governed by 28 U.S.C. § 2254].”).

RECOMMENDATION

Based upon the foregoing, and on all of the files, records, and proceedings herein, IT IS HEREBY RECOMMENDED that this action be DISMISSED WITHOUT PREJUDICE under Fed. R. Civ. P. 41(b) for failure to prosecute.

Date: August 31, 2021

s/ Katherine Menendez

Katherine Menendez
United States Magistrate Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. *See* Local

Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).